

IN

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

2017 MAY -5 PM 12: 22

MARSHALL GARBER
17 Lincoln Woods Way, Apt. 1A
Perry Hall, MD 21128

Plaintiff,

v.

HERIBERTO MENENDEZ, M.D.
3133 Jemima Ave
The Villages, FL 32163

Defendant.

Refiled Case No. 17-CIV-038
ANNETTE CHAY
CLERK OF COURTS
ASHLAND, OHIO
Case No. 17-CIV-078
Judge Ronald J. Forsthoefel

COMPLAINT

Jury Demand Endorsed Hereon

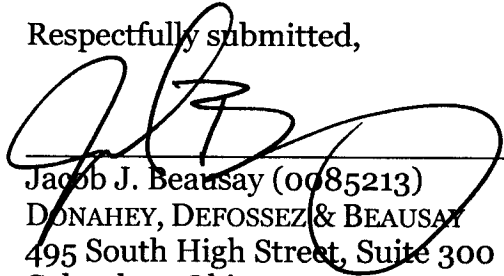
1. Plaintiff Marshall Garber is a resident of Perry Hall, Maryland.
2. Plaintiff Garber reached the age of 18 on August 5, 2013. At all times relevant to this Complaint, Mr. Garber was a minor.
3. Defendant Heriberto Menendez, M.D., is licensed physician, formerly practicing at Pediatric Consultants of Ashland, Inc., in Ashland, Ohio.
4. All the care and treatment provided to Marshall Garber by Defendant Menendez occurred in or around Ashland, Ohio.
5. Defendant Menendez retired from the practice of medicine on April 4, 2014. See attached Affidavit of Heriberto Menendez, M.D.
6. Defendant Menendez permanently relocated his residence to Florida approximately one week after retiring. See attached Affidavit of Heriberto Menendez, M.D.
7. This case has only been voluntarily dismissed by the Plaintiff one time pursuant to Civ.R. 41(A)(1).

EXHIBIT A

8. The statute of limitations is tolled pursuant to R.C. 2305.15 while the defendant is out of state.
9. On November 29, 2010, Plaintiff Marshall Garber was seen by Defendant Menendez at Pediatric Consultants of Ashland with a fever, constipation, and acute sharp, radiating back pain.
10. During his visit, Defendant Menendez ordered a urine test and sent Mr. Garber home.
11. On December 2, 2010, Mr. Garber presented to Samaritan Regional Hospital with similar complaints. He also developed difficulty moving his legs and feet.
12. Mr. Garber was transported to Akron Children's Hospital, where he was diagnosed with a spinal epidural abscess. He underwent a surgical resection of the abscess, however, lost the use of his lower extremities due to the delay in treatment and advancement of his neurological symptoms.
13. The medical care rendered by Defendant Menendez was negligent in that the care deviated from the standard of care required of a reasonable physician. More particularly, Defendant breached the standard of care by discharging Plaintiff without ordering an MRI, or referring him to a hospital, and causing a delay in diagnosis of the spinal epidural abscess.
14. As a direct and proximate result of Defendant's negligence, Marshall Garber suffered injuries, including but not limited to medical expenses, future medical expenses, loss of enjoyment of life, lost wages, mental anguish, pain and suffering, and emotional distress.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount greater than \$25,000 and for all other relief to which he is entitled.

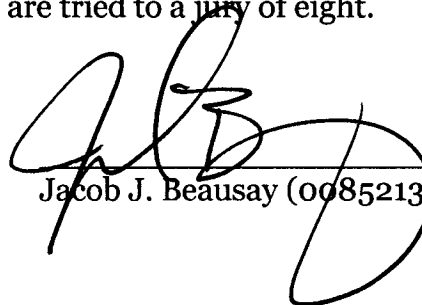
Respectfully submitted,



Jacob J. Beausay (0085213)
DONAHEY, DEFOSSEZ & BEAUSAY
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Columbus, Ohio 43215
614.224.8166/614.849.0475 (fax)
jake@donahey.com
Attorney for Plaintiff Marshall Garber

JURY DEMAND

Plaintiff requests that all issues are tried to a jury of eight.



Jacob J. Beausay (0085213)

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

MARSHALL GARBER,

Plaintiff,

vs.

HERIBERTO MENENDEZ, M.D.,

Defendant.

) CASE NO. 16-CIV-033

) JUDGE RONALD P. FORSTHOEFEL

) AFFIDAVIT OF
) HERIBERTO MENENDEZ, M.D.

STATE OF FLORIDA)

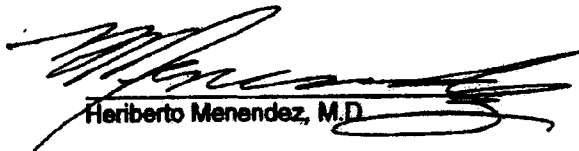
) SS.

COUNTY OF SUMTER)

I, HERIBERTO MENENDEZ, M.D., first being duly sworn, depose and state as follows

1. I am an adult over the age of 18.
2. I retired from the practice of medicine on April 4, 2014.
3. As of April 4, 2014, I was no longer employed by, or affiliated with, Pediatric Consultants of Ashland, Inc.
4. I permanently relocated my residence to Florida approximately one week after retiring.
5. I have never been served with a copy of the Complaint in Case No. 16-CIV-033.

AFFIANT FURTHER SAYETH NAUGHT.


Heriberto Menendez, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20 day of March, 2017.





Notary Public

EXHIBIT C

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

MARSHALL GARBER

Plaintiff,

vs.

HERIBERTO MENENDEZ, M.D.

Defendant.

Case No. 16-CIV-033

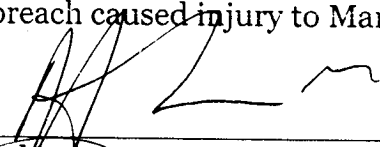
Judge Forsthoefer

AFFIDAVIT OF MERIT

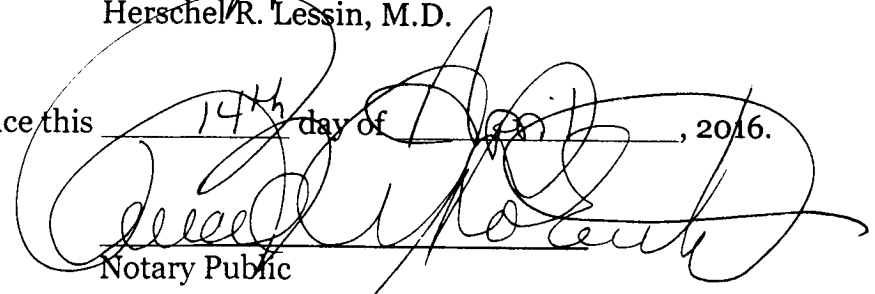
State of New York, County of 1 Dutchess, to wit:

Herschel R. Lessin, M.D., being first duly sworn according to law, deposes and states:

1. I am a physician licensed to practice medicine in the state of New York. I devote at least one-half of my professional time to the active clinical practice of medicine in my field of licensure, or to its instruction in an accredited school.
2. I have specialized knowledge, skill, experience, training and education regarding the subject matter of this affidavit, and my opinion set forth below is based on reliable scientific, technical, or other specialized information.
3. I have reviewed all medical records reasonably available to the plaintiff concerning the allegations contained in the complaint.
4. I am familiar with the applicable standard of care.
5. Based on the information and documentation provided to me, and based on my education, training, and experience, it is my opinion that the standard of care was breached by Defendant Menendez, and the breach caused injury to Marshall Garber..


Herschel R. Lessin, M.D.

Sworn to and signed in my presence this 14th day of April, 2016.


Notary Public

PATRICIA A. ROBERTS
Notary Public - State of New York
No. 01RO5044379
Qualified in Dutchess County
My Commission Expires May 30, 2018